

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the matter of:)	
)	
Request for Waiver of Refund Request of the Universal Service Administrator)	Docket No. 02-6
)	

Ref.: Applicant Name:	New York City Department of Education
Entity Number:	123787
Form 471 Application Number:	137136, 200298 & 264924
Funding Request Numbers:	209429, 486832 & 707076
Funding Years:	1999, 2000 & 2001

In this filing, the New York City Department of Education (“NYCDOE”) asks the Commission to review a request of the Universal Service Administrative Company (“USAC”) to repay additional funds reflecting the discounted portion of auditing fees associated with a refund of overpayments for telecommunications charges previously incurred by NYCDOE. If necessary, a waiver is sought of the underlying program rules upon which the USAC request is based.

Background:

In December 2000, NYCDOE refunded over \$1.1 million to USAC. The refund was based on funds that had been recovered as a result of overcharges on telecommunications services provided by Verizon and its predecessor

companies. The overcharges were identified as the result of specialized billing analysis studies conducted by three telephone audit firms commissioned by NYCDOE.

While difficult to track precisely, NYCDOE had received E-rate discounts on the majority of the overcharges services tracing back approximately three years.¹ As a result, NYCDOE voluntarily initiated a repayment of 78% – its aggregate E-rate discount rate – on the net amount of the refunds it had received as a result of the audits.

In August 2003,² USAC requested that NYCDOE repay an additional amount equal to the discount on the difference between the gross amount of the Verizon refunds generated and the net amount actually received (after audit fees) by NYCDOE.

Issues and Arguments:

The key issue in this filing is the applicant's (NYCDOE's) responsibility under USAC procedures and/or FCC rules to repay the discounted portion of overcharges which were identified, but not actually refunded, to the applicant. The difference represents contingent auditing fees – the standard fee arrangement in the telephone auditing business – which, in this case, represented 24% of the gross Verizon refund,

Table 1.1 shows the gross amount of Verizon refunds obtained by each auditor; the net amount recovered by NYCDOE; and the 78% repayment (\$1,138,097.21) that has been made to USAC.

¹ The telephone audits were conducted independent of NYCDOE's E-rate activities. To assign the total refund to specific FRNs, as requested by USAC, NYCDOE suggested allocating the refunded amount equally to the two Verizon FRNs for FY 2000 and FY 2001 and to the largest of multiple FRNs for FY 1999. Full funding of the others FRNs in FY 1999 indicates that NYCDOE may have received no E-rate discounts some of the recovered overpayments in that funding year. If USAC requires additional allocation details on the refunded amounts, NYCDOE recommends that Verizon be required to undertake the necessary analysis.

² Faxed request by Glasford Walker (PIA Team2) to Winston Himsworth, E-Rate Central, dated August 18, 2003.

Table 1.1

Telephone Audit Refunds and USAC Payment

Audit Firm	Gross Refund	Audit Fee Payment	Fee Percent	Net Refund	78% USAC Repayment
Teledata Control	\$ 263,668.97	\$ 87,010.76	33%	\$ 176,658.21	\$ 137,793.40
Telereview	453,507.82	136,052.35	30%	317,455.47	247,615.27
Phone Review	1,206,231.65	241,246.33	20%	964,985.32	752,688.55
Totals	\$1,923,408.44	\$ 464,309.44	24%	\$1,459,099.00	\$1,138,097.22

In its request to NYCDOE, USAC argues that its “procedures require that the full amount of the overpayments be returned.” Although not stated precisely, we interpret this as a request to return an additional amount equal to 78% of the difference between the gross and net Verizon refunds (i.e., 78% of the auditors’ fees).

Table 1.2 shows what the financial impact on NYCDOE if it was required to repay the additional amount (\$362,161.36) requested by USAC. In total, this would require NYCDOE to repay more to USAC (\$1,500,258.58) than NYCDOE actually received in refunds from Verizon (\$1,459,099.00).

Table 1.2

Audit Benefit to NYCDOE after USAC Repayment

	USAC repayment based on:		
	Gross refund	Net refund	Difference
Gross refund	\$1,923,408.44	\$1,923,408.44	
less: audit fees	464,309.44	464,309.44	
Net refund	1,459,099.00	1,459,099.00	
78% USAC repayment	\$1,500,258.58	\$1,138,097.22	\$ 362,161.36
NYCDOE share of refund after audit fees and USAC repayment	\$ (41,159.58)	\$ 321,001.78	\$ (362,161.36)

Rather than applauding NYCDOE for commissioning an audit of E-rate eligible service charges and voluntarily refunding monies to the Universal Service Fund, USAC’s stated procedures would penalize NYCDOE for its initiative. This would be exceedingly poor public policy. Such a policy

would discourage other high discount applicants from undertaking similar audits.

Telephone audits are an established and cost-effective way for large users to control their telecommunications expenses. Although the Commission has taken steps to simplify telephone billing for smaller customers, the detailed review of larger bills requires a level of expertise not often found even among the more sophisticated Fortune 500 companies (as witnessed by the customer lists of the telephone audit firms). Thorough audits involve the review of hundred page bills and access to carrier line records and underlying tariffs (often with multiple amendments). In general, the only parties with sufficient resources to conduct these audits are the specialized, independent, telephone audit firms or the carriers themselves.

The fees for telephone audits are normally calculated on a contingent basis. Table 2.1 summarizes the fee structures of telephone audit firms as determined by a recent Internet survey conducted by E-Rate Central. Contingent fees are typically based on a percentage of funds recovered for past overcharges and occasionally on a percentage of projected savings over several ensuing years. The percentage is often negotiable but, as shown in Table 2.1, can be as high as 50%.

Table 2.1

Web Based Survey of Telephone Audit Pricing

Company	Web Address	Indicated Fee Structure	Fee Percentages	
			Refund	Recurring
<u>Firms used by NYCDOE</u>				
Phonereview	ww.phonereview.biz/home.htm	Contingent		
Teledata Control	N/A	Contingent*		
TeleReview (Haigh Todd)	www.haightodd.com/index.cfm?page=telereview	Contingent*		
<u>Other firms listed on Web</u>				
Access Utilities	www.accutil.com/telephone.htm	Contingent		0%
Auditel	www.auditelinc.com	Contingent	50%	50%
Information Strategies Group	www.infostrategiesgroup.com/mod4c/4cframeset.htm	Contingent		
Intera Communications	www.smartpartner.com/tel_aud.html	Contingent		
Makesense	www.makesense-inc.com/	Contingent	50%	50% (2 yrs.)
Tel Assess	www.telassess.net/bar.html	N/A		
Telecom Facilities Mgmt.	www.telephoneaudit.com/	Contingent		
Utility Audit Services	www.utilityauditservices.com/index.html	Contingent	50%	50% (2 yrs.)

* Fee structure not specified on Web site; contingent fee used for NYCDOE

For its telephone audit, NYCDOE employed three separate firms. As indicated in Table 1.1, the contingent fees negotiated with these firms were in the 20-35% range; no fees were charged on future savings. By giving most of the business to the firm with the lowest percentage fee, NYCDOE was able to hold its average fee to 24%.

More generally, for larger school districts, telephone audit fees are likely to be in the 25-40% range. In the context of this filing, this means that any large applicant with an aggregate discount of 60-75% would actually lose money on funds recovered through a telephone audit if USAC procedures requiring repayment of the discounted portion of gross refunds are enforced. This would sharply curtail the incentive for any E-rate applicant to voluntarily institute its own telephone audit.

Review and/or Waiver Request:

NYCDOE asks the Commission to review USAC's request to return additional funds that reflect the discounted portion of telephone auditing fees associated with the refund of overpayments of telecommunications service charges previously incurred by NYCDOE. If necessary, a waiver is sought of the underlying program rules upon which the USAC request is based.

More broadly, NYCDOE asks the Commission to find that telephone audits are a valuable and cost-effective tool for controlling school and library telecommunications costs and for assuring Universal Service Fund integrity.³ The Commission should also find that reasonable fees incurred by applicants are a necessary expense for such audits. As a result, the calculation of funds to be repaid to USAC should be based on the discounted portion of carrier refunds – net of audit fees – actually received by an applicant. Such a procedure would assure that an applicant would not be penalized for voluntarily initiating an audit of its own telecommunications service charges.

Specifically, NYCDOE asks the Commission to affirm that the payment it made to USAC in December 2002, based on the net refunds it had received from Verizon, fully conforms with both the spirit and the letter of the E-rate

³ Indeed, the Commission might want to recommend that USAC consider incorporating telephone audits into its own beneficiary audit program. If instituted on a contingent fee basis using third-party telephone audit firms, USAC could expand the scope of its audits without impacting its existing audit budget.

program's rules. Should the Commission find to the contrary, NYCDOE requests that a waiver be granted to exempt it from USAC's request for an additional payment based on the discounted portion of the audit fees.⁴ Such a waiver, which would serve to maintain an applicant's incentive to initiate its own telephone audits for the good of the E-rate program, would be in the public interest.

Respectfully submitted,

By: _____
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Dated: October 17, 2003

⁴ As an alternative, should the Commission find that a waiver is not justified, NYCDOE asks that Commission direct USAC to obtain the discounted portion of the audit fees from Verizon. Placing some responsibility on the carriers, which overcharge for services, rather than on the carriers' customers, would create additional incentives for the carriers to more carefully monitor their billing records.